

Only persons who have actually paid taxes to the Department can file claims for credit. See 86 Ill. Adm. Code 130.1501. (This is a GIL).

February 23, 2000

Dear Xxxxx:

This letter is in response to your letter dated December 30, 1999 to Glen Bower, Director of Revenue. Your letter has been forwarded to the Legal Services Office for a response. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

1. REQUEST FOR REFUND:

COMPANY hereby files a refund claim pursuant to Ill. Comp. Stat. ch. 35 Sec. 630/10, and General Information Letter, Ill. Dep't of Revenue, January 16, 1996. Taxpayer respectfully requests a refund of sales and use tax and interest involving bad debts.

2. AMOUNT OF REFUND AND PERIOD:

Amount of Refund Requested for the period July 1, 1996 through December 31, 1999: \$\$\$.

3. NAME AND ADDRESS OF TAXPAYER:

NAME/ADDRESS

4. BASIS FOR THE CLAIM:

A. Statement of Facts

COMPANY has its administrative office located at ADDRESS, Illinois. COMPANY provides financial services to the automobile industry. COMPANY purchases contracts from auto dealers. The transactions, which give rise to the bad debt sales and use tax refund, begin with the sale of an automobile by a dealer to a consumer on a credit basis. The dealer pays the sales tax to the Illinois Department of Motor Vehicles. The dealer assigns the contract to COMPANY. COMPANY, therefore, has all of the rights, title and interest of the dealer in the contract. The purchase price COMPANY pays for

the contract includes the amount of sales tax paid by the dealer to the Department of Motor Vehicles, which is then collected by COMPANY from the consumer. COMPANY, as the assignee of different dealers, is presently seeking to recover the amount of sales tax paid on the portion of the assigned account that have become worthless debts and have been written off on its federal income tax return.

B. Discussion and Legal Analysis

1. Applicable Law and Regulations

Illinois imposes a retailer's occupation tax on persons engaged in the business of selling tangible personal property at retail. Ill. Rev. Stat. ch. 35, para. 120/2; Ill. Admin. Code tit. 86, § 130.101. The legal incidence of the tax is placed on the seller rather than on the purchaser. Ill. Admin. Code tit. 86, § 130.101. The basis of the tax is 'gross receipts' from sales of tangible personal property. Ill. Rev. Stat. ch. 35, para. 120/2-10. 'Gross receipts' means the total selling price and, in the case of charge and time sales, includes only the amounts received as payments from the purchaser. Ill. Rev. Stat. ch. 35, para. 120/1.

2. Analysis

It has been Department administrative policy to allow a retailer filing a return for gross sales to take a bad debt deduction. The Department has expressed this policy through numerous private letter rulings. See, Private Letter Ruling No. 96-0020, Illinois Dep't of Revenue, January 16, 1996; See also, Private Letter Ruling No. 94-0250, Illinois Dep't of Revenue, July 1, 1994; Private Letter Ruling No. 92-0368, Illinois Dep't of Revenue, July 16, 1992. The Department reaffirmed this position in a July 1, 1994 General Information Letter. The General Information Letter provided that:

[A] retailer filing on the gross sales basis may take a bad debt deduction as an authorized deduction on the ST-1 return for the month in which that bad debt was written off for federal income tax purposes. General Information Letter, Ill. Dep't of Revenue, January 16, 1996.

COMPANY is not the retailer that sold the items on the installment basis and collected Illinois sales tax on them. The price COMPANY paid to the initial retailers of these items reflected the amount of sales tax collected.

Assignment Law

Under Illinois assignment law the assignee steps into the shoes of the assignor and assumes the same rights, title and interest possessed by the assignor. *Plumb v. Fluid Pump Service, Inc. et al.*, 124 F.3d 849, 864 (7th Cir. 1997), citing *Moutsopoulos v. American Mutual Ins. Co.*, 607 F.2d 1185, 1189 (7th Cir. 1979); see also *Ruva v. Mente*, 200 Ill. App.3d. 442, 557 N.E.2d 964 (Ill. App. 1990)(assignment transfers all of

assignor's rights to assignee); *Collins Company v. Carboline Company et al.* 125 Ill.2d 498,837, 532 N.E.2d 834 (1988)(assignee of warrantee's rights under a warranty succeeds to all rights under the warranty, including right to sue for damages).

In the absence of a statute prohibiting it, the assignment of a right to an account should vest in the assignee all rights, and interest possessed by the assignor, including the right to pursue a tax refund.

There is no Illinois statute that bars the assignability of refund claims. In the absence of a statutory prohibition, the case law allows COMPANY to pursue tax refund claims arising out of its purchased installment sales contracts.

The Washington State Supreme Court recently decided a case whose facts are quite similar to those at issue here. In *Puget Sound National Bank v. Department of Revenue*, 868 P.2d 127 (Wash. 1994), the Washington Supreme Court held that a bank was entitled to a sales tax refund arising out of defaulted installment sale contracts assigned to it by automobile dealers. In the absence of a statutory prohibition against assignment, the court applied general principles of assignment law to determine that tax refund claims may be brought by an assignee.

The issue in *Puget Sound* was the statutory requirement that the person who makes the refund claim be the person making retail sales. In order for the bank to satisfy that requirement, the assignment of the installment contracts must satisfy the 'making sales at retail requirement.' The Court concluded that 'the status of the Bank includes the dealers' prior tax attribute of 'making sales at retail.' Since the assignment of the installment contracts carried with it the 'making sales at retail' requirement, the Bank is entitled to a sales tax refund' *Id.* At 132. The Court also concluded that 'an assignment carries with it the rights and liabilities identified in the assigned contract, but also all applicable statutory rights and liabilities. To hold otherwise would be contrary to the rule that the assignee acquires whatever rights the assignor possessed prior to the assignment.'

Denial of Due Process

Under the terms of the contracts, COMPANY has no recourse against the original dealers from whom it purchased the contracts. The dealers did not write the accounts off on their federal income returns, therefore they would have no right to refund from the Department. Accordingly, a denial of the refund claim would constitute a denial of due process to COMPANY.

Free Transferability of Commercial Paper

Furthermore, to disallow COMPANY from taking a credit for these uncollectible accounts would result in a windfall to the state, and would pose a threat to the free

transferability of commercial paper. These concerns were recognized by the *Puget Sound* Court.

An important policy reason for permitting the assignment of a tax refund claim under RCW 82.08.037 is to ensure that commercial paper continues to travel freely in the marketplace. If this court permits assignment of certain contractual or statutory rights, while prohibiting others, parties to an assignment will be unable to determine what rights and liabilities transfer in assignment.

Id. At 131.

5. REQUEST FOR A CONFERENCE:

COMPANY respectfully requests a conference to review its refund claim with the Department.

6. ADDITIONAL INFORMATION:

COMPANY respectfully reserves the right to produce additional material, further explain its position, and to advance additional arguments. Documentation to support this claim is available upon request.

We have referred your request for refund to our Sales Tax Processing Division for their action. Although that Division will make the decision on your request for refund, we will recommend that it be denied. We cannot agree with your conclusion that the right to file a sales tax claim for credit or refund in Illinois is transferred with the assignment of an underlying account receivable paper. Section 6 of the Retailers' Occupation Tax Act (35 ILCS 120/6) provides that the only person who is entitled to receive a credit or refund when there has been an overpayment of Retailers' Occupation Tax due to a mistake of fact or error of law is the remitter of the tax to the Department. The statute and case law make clear that the only person with standing to file such a claim in Illinois is the person who remitted the tax to the State. Please refer to Snyderman v. Isaacs 31 Ill.2d 192, 1964. Because COMPANY is not the party who paid the tax to the Department, COMPANY cannot maintain a claim for credit or refund here.

Your letter requests a refund for purported bad debts arising from COMPANY's purchase of contracts from auto dealers. Although you did not mention the type of property that was the subject of these transactions, we believe there may be some transactions where automobiles were sold. As mentioned above, the only party authorized to file a claim for credit or refund under the Illinois Retailers' Occupation and Use Tax Acts is the person who has remitted the tax to the Department, and in the context of automobile sales this would be the dealers who sold the automobiles. Please refer to 86 Ill. Adm. Code 130.1960(d), enclosed, where it explains that when a retailer repossesses and then subsequently resells tangible personal property, he is entitled to a repossession credit on the original sale to the extent he has paid the Retailers' Occupation Tax on a portion of the price which he does not collect, or which he is not permitted to retain because of being required to make a

repayment thereof to a lending agency under a "with recourse" agreement. In the case of automobile dealers, Section 130.1960(d) also explains how they may file a claim for credit.

We have reviewed the decision in the Puget Sound case and we conclude it has no precedential value for Illinois sales tax law. The Puget court was interpreting Washington statutes, one of which contained a definition for "person" that included the term "assignee." There is no similar provision in the Illinois Retailers' Occupation and related Tax Acts. In fact, the Retailers' Occupation Tax Act's definition for person does not contain the term "assignee." Please refer to 35 ILCS 120/1 where person is defined as:

"[A]ny natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, limited liability company, or a receiver, executor, trustee, or guardian or other representative appointed by order of any court."

In summary, Illinois law does not authorize assignees to file claims for credit or refund. If the transactions involve automobile repossessions, then the dealers could file claims pursuant to 86 Ill. Adm. Code 130.1960(d).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.